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In re Application of :
DEGHAN *et al* :
U.S. Application No.: 10/539,475 :
PCT No.: PCT/GB03/05589 :
Int. Filing Date: 18 December 2003 :
Priority Date: 18 December 2002 :
Docket No.: 71522-0016 :
For: COMMUNICATION NETWORK AND :
METHOD FOR SIMULATING OR :
DESIGNING :

RECEIVED:
McGarry Bair PC
Intellectual Property Counselors
By bmv at 9:28 am,
12/26/06

DOCKETED:
McGarry Bair PC
Intellectual Property Counselors
By rjm at 10:40 am,
12/27/06

DECISION

This decision is in response to the petition filed on 15 August 2006 which is treated under 37 CFR 1.8(b). No fee is required.

BACKGROUND

On 16 November 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a declaration in compliance with 37 CFR 1.497(a) and (b) and a \$65.00 surcharge fee must be provided. A two-month time period for response was set with extensions of time available pursuant to 37 CFR 1.136(a).

On 30 November 2005, applicants purportedly filed via facsimile a reply to the Form PCT/DO/EO/905 which was accompanied by, *inter alia*, an executed declaration and authorization to charge the required fees to Deposit Account No. 50-2003.

On 10 August 2006, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) stating that the above-captioned application was abandoned because applicants failed to respond to the Form PCT/DO/EO/905 mailed 16 November 2005 within the time period set.

On 15 August 2006, applicants filed the subject petition which was accompanied by, *inter alia*, copies of the documents purportedly filed via facsimile on 30 November 2005 and a copy of facsimile receipt dated 30 November 2005.

On 29 November 2006, the DO/EO/US mailed a Withdrawal of previously Sent Notice and a Notification of Acceptance of Application Under 35 U.S.C. 371 and 1.495

(Form PCT/DO/EO/903).

DISCUSSION

Applicants claim that a response to the Form PCT/DO/EO/905 was filed via facsimile on 30 November 2005. This response included an executed declaration and authorization to charge the required surcharge fee. However, the declaration was not located in the file and USPTO financial records show that the surcharge fee was not charged in the subject application.

37 CFR 1.8 *Certificate of mailing or transmission*, states in part:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

In the subject petition, applicants request to withdraw the holding of abandonment and have provided a copy of the documents purportedly filed 30 November 2005. Applicants included a copy of the law firm's Communication Journal receipt dated 30 November 2005. A review of the evidence shows that a facsimile transmission of nine pages was successfully received at telephone number "17033053230." This is an authorized number for receiving national stage responses. The communication was listed as successful. A copy of the nine-page submission was provided.

This evidence meets the requirements of 37 CFR 1.8(b) and is sufficient for a

grantable petition.

CONCLUSION

Applicants' petition to withdraw the holding of abandonment is **GRANTED**.

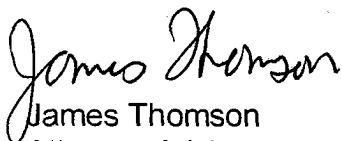
The Form PCT/DO/EO/909 mailed 10 August 2006 is hereby **VACATED**.

However, the declaration originally filed 30 November 2005 is not in compliance with 37 CFR 1.497(a) and (b). The first inventor has made a noninitialed change in ink on the declaration. Any changes made in ink should be initialed and dated by the applicants prior to execution of the declaration. The Office will not consider whether noninitialed and/or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration. See MPEP § 605.04(a).

For this reason, the Notification of Acceptance of Application Under 35 U.S.C. 371 and 1.495 (Form PCT/DO/EO/903) mailed 29 November 2006 is **VACATED**.

Applicants have **TWO (2) MONTHS** from the mail date of this decision to submit a declaration in compliance with 37 CFR 1.497(a) and (b). Extensions of time under 37 CFR 1.136(a) are authorized.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450.



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